IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5801 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATIMABEN GOPALDAS DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5801 of 1991

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR KB PUJARA for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/02/2003

ORAL JUDGEMENT

The present petition is filed by the purchaser of land in question praying for quashing and setting aside

the order dated 8-10-1990/9-10-1990 passed by the Additional Chief Secretary, Reveneu Department (Appeal), Government of Gujarat, cancelling the order passed by the Deputy Collector L.N.D.11-Songadh on 29-9-1984 granting permission under Section 73 AA of the Bombay Land Revenue Code (for short "the Code").

2) It is the case of the petitioner that the petitioner was running a stone cutting industry known as Bhawani Stone Quory and the petitioner wanted to purchase the lands belonging to Jivanbhai Ukadbhai Gami and others and for that purpose the oroginal owners of the land have applied for sanction to Collector for transfer of the said land to the petitioner. It is further the case of the petitioner that the respondent No.4 was empowered to grant the permission under Section 73 AA of the Code, as per the notification issued by the Collector, Surat on 30th April, 1984. Even while passing the order dated 29-9-1984, respondent No.4 had also kept in mind the instructions issued by the State Government vide circular dated 23-3-1982 for granting sanction under Section 73 AA of the Code. The petitioner has further submitted that after the purchase of the land, the petitioner has complied with all the conditions imposed by respondent No.4 and the said transaction was entered into by entry No.874/91 dated 3-10-1984 and entry No.875 dated 11-10-1984, following the execution and registration of sale deed with the Sub-Registrar, Vyara on 10-10-1984.

3) The petitioner has further submitted that almost after a long period of five years, the petitioner was served with a show cause notice dated 16-10-1989 by the respondent No.2, calling upon the petitioner to show cause as to why the order dated 29-9-1984 passed by the respondent No.4 should not be set aside. The petitioner has filed a detailed reply to the said show cause notice on 24-11-1989. The petitioner has raised the preliminary objection against said reply that the respondent No.2 does not have jurisdiction to take in revision the order passed by the respondent No.4. It was further submitted that the order passed by the respondent No.4 was absolutely legal and valid and it was passed after following due procedure of law. The petitioner has further raised the contention that even on the principles of promissory estopple it is not open to the Government to revise the order passed by the respondent No.4. It was further submitted that the petitioner had registered quory work even prior to the passing of the order and thereafter from 1984 the petitioner had spent a huge amount in staring and developing the quories in the said place. The petitioner has changed her position to her

detriment after the said order was passed. The petitioner further submitted that power under Section 211 must be exercised within a reasonable period and the period of five years cannot be considered to be a reasonable period. For this submission, the petitioner relied on the decision of this Court in the case of Rajul Co-operative Housing Soceity Ltd. V. State of Gujarat reported in 1984 GLH 968, following the judgemen of the Hon'ble Supreme Court in the case of State of Gujarat V. Raghav Natha, 10 GLR 992, wherein the view was taken by the Court that since the State Government having not exercised powers within a reasonable period, the order passed by the Collector as also by the State Government were quashed and set aside. Even on merits also, the petitioner has submitted that the order passed by the Deputy Collector granting permission under Section 73 AA of the Code is just and proper and no interference is called for. Despite these submission, the respondent No. 2 has passed the order on 9-11-1990 and cancelled the order passed by respondent No.4 on 29-9-1984.

4) The petitioner has raised allmost all the contentions which were raised before the respondent No.2 in response to the show cause notice issued as well as at the time of hearing of before him. In addition to this, the petitioner further submitted that the respondent No.2 was not right in holding that the respondent No.4 has no power and authority to pass the order dated 29-9-1984. As a matter of fact, the respondent No.2 had delegated his powers under Section 73 AA of the Code by notification dated 30th April, 1984 to the respondent No.4 and the respondent No.2 has passed the order dated 29-9-1984 only in exercise of such powers which is legal and valid. It was further submitted that even on merits the permission under Section 73 AA could not be denied to the land owners of the land in question and the prime condition required to be satisfied for sanction are that they should get reasonable price and that transfer of occupancy should be for the purpose of industrial undertaking. It was submitted that the reasonable price allowed by the respondent No.4 was Rs.3,304/- per acre as against which the petitioner had paid the price at the rate of Rs.6,001/- per acre and the petitioner has purchased the land for the purpose of industrial underkaing namely M/s.Bhawani Stone Quory, which was registered as a small scale undertaking with the District Industrial Center, Surat.

5) It was further submitted that under the provisions of Rule-57-L of the Gujarat Land Revenue Rules, 1972, the previous approval of the State

Government is not required when the transfer of occupancy of a tribal person is made to a non-tribal person who made a huge amount of money for the purpose of industrial undertaking. Thus, the provisions of Rule 57-L cannot be pressed into service and the respondent No.2 has wrongly misread and misinterpreted the permission. Thus, on merits as well as on legal aspects, the petitioners have submitted that the order passed by the respondent No.2 is not in accordance with the provisions of law and hence it deserves to be quashed and set aside.

6) This Court has issued the rule on 9-9-1991 and interim relief as prayed for was granted by this Court. After service of the rule, an affidavit-in-reply was filed on behalf of the respondent as late as on 25-11-2000. The Collector, Surat, in the affidavit has said that the State Government has conferred the power to the Deputy Collector L.N.D.-11 only to discover the cases of transfer of lands contrary to the provisions of Section 73 A and 73 AA and initiating necessary proceedings under Section 7 of the Code. It was further stated in the said affidavit that the power to grant permission for sell of land was not conferred upon the Deputy Collector, L.N.D.-Songadh. The said power is vested with the Collector only and not with the Deputy Collector and hence the permission granted by the Deputy Collector by the order dated 29-9-1984 was illegal and without any authority of law. It was, therefore, submitted that the purchase of the land by the petitioner from the Schedule Tribe person was contrary to the provisions of law. It was, therefore, stated in the affidavit that the respondent No.2, has rightly cancelled the order passed by the respondent No.4.

7) Heard Mr.Vyas, the learned advocate appearing for Mr.B.S.Patel for the petitioner and Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for the respondent.

8) Mr.Vyas has reiterated all these submissions which are made in the petition, as well as made before the respondent No.2 in response to the show cause notice and at the time of hearing of the matter. He has further stated that there is no infirmity in the order passed by the respnodent No.4 while granting the permission under Section 73 AA of the Code, as all the conditions laid down therein were satisfied. He has further submitted that the respondent No.4 was duly vested with the powers, on the basis of the notification issued by the State Government and there was no justification to disturb the said order on expiry of five years and he has relied on

the decision of this Court reported in the case of Patel Maganbhai Kesurbhai Since Deceased through His Heirs v. Bhogilal Punjabhai Vasava & ors. XXXIX (2) GLR, page 961, wherein this Court has in detail discussed this issue and come to the conclusion that even in case when no permission was obtaiend by the original land owners for sell and transfer of the land, the same can be obtained subsequently and for that purpose, the matter was remanded to the authorities. The following observations made by this Court are relevant for the purpose of deciding the issue involved in the present matter.

"The petitioner has changed its position or to be more precisely, the respondent No.5 has permitted the petitioner to change its position after purchase of the land in dispute. The delay in such matters in initiation of the proceedings for declaration of the sale deed to be invalid under the provisions of Section 73 AA of the Code is to be taken seriously and is fatal. The respondents by their inaction or omission may be deliberate or bona fide have permitted the petitioner to settle on the land and in fact he has settled on the land. Silence of the concerned authorities in such matters for three years is a serious matter in a case where the party, the transferee has changed its position. It is also not on the record of this Special Civil Application that the petitioner was not a bona fide purchaser. The doctrine of bona fide purchaser may not be strictly complied to the sale transactions of the nature as prohibited under Section 73AA of the Code but still while examining the question of dealy of initiation of the proceedings for cancellation of the sale in the matter this fact may be a relevant fact. What Section 73 AA of the Code says that the occupancy of a person belonging to any of the Secheule Tribe shall not be transferred to any person without previous sanction of the Collector. So the transfer is not totally prohibited but it is permissible with the previous sanction of the Collector. That sanction has not been taken in the present case but in the facts of the present case and particularly the fact the petitioner has raised the construction on the land and the proceedings have been initiated after three yeras of the sale deed, the Court considers it to be appropriate to send the matter to the Collector to consider the question of grant of post-facto sanction to the sale transaction of the land. The respondent Nos.1 to 4 to whom this land was belonging have not objected to the sale nor they have come up with a case that they have been exploited and that they now want the land for them. This course the Court is adopting for the reason that the

State Government, its officers and functionaries are in fact responsible for all these transactions as they have not any check or vigilance in these matters as well as for the reason that there is a delay of three years in initiation of the proceedings under Section 73AA of the Code. The respondent-State, its officers and functionaries have permitted the petitioner by necessary implication to raise the construction and now if at this stage he is ordered to be ousted from the land and the house standing thereon then it will not be reasonable. The sale transaction is of the year 1981 now we are in the year 1997. This Court has protected the petitioner by grant of interim relief also."

9) Mr.Bukhari, learned AGP has supported the order passed by the respondent No.2 and submitted that he has rightly cancelled the permission granted by the respondent No.4 under Section 73 AA of the Code. He has further submitted that the petition suffers from infirmity of misjoinder of parties, as the original land owners are not joined as parties in the proceedings. He has further submitted that since the Deputy Collector, the respondnt No.4 was not vested powers of granting permission under Section 73 AA and yet the said permission was granted by him, the order passed by him is deserved to be quashed and set aside.

10) He has further submitted that by Notification dated 30th October, 1984 limited powers were given to the respondent No.4 by the respondent No.3 and hence under the guise of the Notification the respondent No.4 should not have granted the permission under Section 73 AA of the Code. In any view of the matter, it is contended that the order passed by the respondent No.2 is just and proper and challenge to the said order made by the petitioner in present petition does not call for any interference by this Court.

11) After having heard the learned advocate Mr.Vyas appearing for the petitioner and Mr.Bukhari, learned AGP appearing for the respondent and after having gone through the papers and documents on record and also after having considered the decision cited by Mr.Vyas, I am of the view that the respondent No.2 is not justified in cancelling the order passed by respondent No.4. First of all the suo motu powers are exercised by the respondent No.2 after about the lapse of period of more than five years, which cannot be said to be reasonable, keeping in mind the settled legal position. Secondly, the

respondent No.4 was vested with the powers of granting permission under Section 73 AA of the Code and while exercise of that power, if the permission is granted, neihter original land owner nor the purchaser should be at fault and on that count such a permission cannot be withdrawn subsequently. Thirdly, the decision of this Court in the case of Maganbhai Kesurbhai (supra) clinches the whole issue and even in the case where no permission is granted, the Court has thought it fit to give directions to the authorities to grant such permission and matter was remanded for the purpose. The petitioner has made out a case before the authorities and before this Court also that all the conditions, which are laid down are satisfied and there is no irregularity or illegality in granting permission. Simply because the original land owners are not joined as parties in the present proceedings, the petitioner cannot be denied the protection of his rights. Even otherwise no grievance was made since 1992 by the original land owners before any authority. Thus, taking overall view of the matter and after considering the entire records, I am of the view that order passed by the respondent No.4 is just and proper and there is no reason for the respondent No.2 to disturb the said order. This Court has, therefore, found sufficient substance in the petition and order passed by the respondent No.2 is hereby quashed and set aside and the order passed by the respondent No.4 is hereby restored.

The present petition is, therefore, allowed.
Rule is made absolute with no order as to costs.

(K.A.Puj, J.)
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